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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 2 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF GIFT TAX

Versus

CHINUBHAI BHIKHABHAI (INDL)

Appearance:

1. GIFT TAX REFERENCE No. 2 of 1995

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 21/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1970-71 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the shares in question were transferred for adequate consideration and that there was no element of deemed gift within the meaning of section 4(1)(a)?"

2. We have heard Mr MR Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee, alongwith his brothers, entered into a contract with Mr Somaiya to sell 10,069 shares of Testeels (India) Ltd. at the rate of Re.1/- per share. The value of these shares quoted at the stock exchange was Rs.50/- per share. The Gift-tax Officer arrived at the conclusion that there was an element of deemed gift of Rs.49/- per share within the meaning of Section (1)(a) of the Gift-tax Act. He determined the taxable gift at Rs.1,20,442/-. The Assistant Appellate Commissioner held that the shares in question were transferred for adequate consideration and, therefore, the transfer was not liable to be taxed. For arriving at this conclusion, the Assistant Appellate Commissioner relied on the order passed by the Commissioner of Income-tax (Appeals) in the case of assessee's brother Jayantilal Bhikhabhai. The Tribunal dismissed the revenue's appeal by following its own decision in favour of assessee's brother Jayantilal Bhikhabhai.

4. At the hearing of this reference today, our attention is invited to the decision dated 4.12.2001 of this Court in Gift Tax Reference No. 28 of 1987 which was made at the instance of the revenue in the case of Jayantilal Bhikhabhai wherein this Court held that indemnification by Mr Somaiya against the bank liability as a guarantor was adequate consideration in the transaction relating to the transfer of shares and hence, provisions of Section 4(1)(a) of the Gift-tax Act were not applicable in the case of Jayantilal Bhikhabhai.

5. Since the present assessee's case is identical to the case of Jayantilal Bhikhabhai, applying the ratio of the aforesaid decision in the case of Jayantilal Bhikhabhai, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)
sundar/-